



Signed and Filed: September 08, 2006

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|------------------------------------|---|------------------------------|
| In re |) | Case No. 02-31521 STC |
| |) | |
| ALEXIS MAGER LAKUSTA, |) | |
| |) | |
| |) | Chapter 7 |
| |) | |
| Debtor. |) | |
| |) | |
| ALEXIS MAGER LAKUSTA, |) | Adv. Proc. No. 03-3549 TC |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| MARK H. EVANS, SHARON LA FOUNTAIN, |) | Date: August 11, 2006 |
| and ALVIN C. SILVERNAGEL, |) | Time: 9:30 a.m. |
| |) | Ctrm: Hon. Thomas E. Carlson |
| |) | 235 Pine Street |
| Defendants. |) | San Francisco, CA |
| |) | |

MEMORANDUM RE MOTION TO DECLARE
ALEXIS LAKUSTA A VEXATIOUS LITIGANT

At the above date and time, the court held a hearing on the
Motion of Mark Evans to Declare Alexis Lakusta A Vexatious

1 Litigant. This memorandum constitutes the court's findings of fact
2 and conclusions of law regarding the Motion.

3 **FACTS**

4 Alexis M. Lakusta ("Lakusta") filed chapter 11 on June 4,
5 2002. The case was converted to chapter 7 on December 19, 2002.
6 Lakusta sued Mark Evans ("Evans") in bankruptcy and state court in
7 an effort to recover real property that Lakusta had transferred to
8 Evans prepetition. As described in more detail below, Lakusta lost
9 that litigation, and has been unable to accept this loss.

10 **The First Action**

11 Lakusta filed AP No. 02-3125 against Evans in this court on
12 June 10, 2002 (the "First Action"). The complaint includes the
13 following allegations. Lakusta owned three real properties located
14 on Old La Honda Road in Woodside, California. On March 26, 2002,
15 Lakusta entered into a general partnership with Evans to develop
16 548 Old La Honda Road and 579 Old La Honda. Evans was to act as
17 the general contractor. By April 22, 2002, Evans convinced Lakusta
18 to convey his entire interest in 548 Old La Honda, and a "full
19 interest" in Lakusta's home at 633 Old La Honda. Evans caused the
20 grant deeds to be recorded, after which he "forcibly removed"
21 Lakusta from the property at 633 Old La Honda and took Lakusta's
22 valuable personal property from the premises. The transactions
23 alleged in the First Action are hereinafter collectively referred
24 to as the "2002 Transactions".

25 Shortly after Evans filed a timely answer in the First Action,
26 the parties settled the action via a signed settlement agreement
27 (the "Settlement Agreement"). This court signed an order approving

1 the settlement on August 20, 2002 (the "Settlement Order"). Under
2 the express terms of the Settlement Agreement, Lakusta and Evans
3 released all claims they had against each other, including a
4 release of all claims under California Civil Code section 1542.

5 Two and one-half months after entry of the Settlement Order,
6 Evans filed a motion to enforce the Settlement Agreement, and
7 Lakusta countered with a motion to vacate the Settlement Order.
8 Prior to a determination on these cross motions, the First Action
9 was dismissed via a stipulation filed on June 18, 2003.

10 **The Second Action**

11 On August 5, 2003, Lakusta filed an action against Evans in
12 San Mateo Superior Court (No. CIV 433241) seeking to void the March
13 2002 transfer to Evans of 633 Old La Honda (the "Second Action").
14 Lakusta filed the Second Action while his chapter 7 case was open,
15 despite the fact that the chapter 7 trustee had not abandoned to
16 Lakusta any litigation claims, and notwithstanding the release of
17 claims against Evans. In the Second Action, Lakusta alleged that
18 the contract transferring 633 Old La Honda did not comply with
19 California Civil Code section 1695. The complaint also named as
20 defendants Sharon La Fountain, a California notary public, and
21 Alvin C. Silbernagel, a licensed California real estate broker.
22 Evans filed a timely notice of removal of the action, which was
23 assigned Adv. Proc. No. 03-3549.

24 The Second Action proceeded to trial, and this court entered
25 judgment in favor of Evans on June 7, 2005 (the "Judgment"). The
26 Judgment provided that the Settlement Agreement was fully
27

1 enforceable, and that the Second Action was barred as a result of
2 the release provisions in that Agreement.

3 Lakusta did not appeal the Judgment. On June 21, 2005,
4 Lakusta pro se filed a Rule 60(b) motion for amendment of the
5 Judgment, which the court denied on the basis that the motion
6 identified no legally cognizable grounds for relief. The motion,
7 exhibits, and related memorandum of points and authorities totaled
8 34 pages.

9 On June 8, 2006, almost one year after denial of the first
10 Rule 60(b) motion, Lakusta pro se filed a second Rule 60(b) motion.
11 This second motion, exhibits, and related memorandum of points and
12 authorities totaled 96 pages. The court also denied the second
13 motion on the ground that it stated no basis for relief from
14 judgment cognizable under Rule 60(b).

15 **The Third Action**

16 On April 15, 2006, Lakusta filed an emergency motion for
17 relief from stay to file a new action against Evans before the
18 statute of limitations ran. This court, which was out of town,
19 granted the motion in order to preserve the statute of limitations
20 while the court decided whether the action should proceed.
21 Pursuant to the stay-relief order, on April 21, 2006, Lakusta filed
22 an action in San Mateo Superior Court against Evans, Evans' company
23 (Old La Honda Properties), and Evans' former counsel in the Second
24 Action, asserting a breach-of-contract claim regarding the 2002
25 Transactions (the "Third Action"). Also on April 21, 2006, Lakusta
26 filed a motion to compel the chapter 7 trustee to abandon the
27 estate's interest in all claims against Evans, his agents and

1 employees, including but not limited to all of the claims alleged
2 in the First Action and in the Second Action. Lakusta's counsel
3 withdrew prior to the scheduled hearing on the motion to abandon,
4 and substituted Lakusta in pro per.

5 The court denied the motion for abandonment, finding that the
6 Trustee remained the real plaintiff in any new action, that the
7 Third Action also arose out of the 2002 Transactions, and that
8 Lakusta therefore improperly was seeking to relitigate the issues
9 resolved via the Judgment. The court also vacated the limited
10 stay-relief order and ordered the Trustee as plaintiff real-party-
11 in-interest to dismiss the Third Action.

12 On May 22, 2006, Lakusta filed a Notice of Appeal of the order
13 denying the motion for abandonment. That appeal apparently still
14 is pending.

15 Since the 2002 settlement between Lakusta and Evans, Evans has
16 incurred more than \$200,000 in attorney fees to defend against
17 Lakusta's lawsuits and motions regarding the 2002 Transactions.

18 Lakusta filed no written opposition to Evans' present Motion
19 to Declare Lakusta A Vexatious Litigant, but rather appeared at the
20 hearing and stated on the record at the hearing that he had a
21 lengthy new Rule 60(b) motion that he wished to have adjudicated.

22 **LAW**

23 A bankruptcy court has authority to protect and enforce its
24 judgments. 11 U.S.C. § 105(a); Walker v. Stanley, 231 B.R. 343
25 (N.D. Cal. 1999) ("There is strong precedent establishing the
26 inherent power of federal courts to regulate the activities of
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1 abusive litigants by imposing carefully tailored restrictions under
2 the circumstances.") (citations omitted).

3 The court should weigh the following factors in determining
4 whether or not to restrict a litigant's future access to the court:

5 (1) the litigant's history of litigation and in
6 particular whether it entailed vexatious, harassing or
7 duplicative lawsuits; (2) the litigant's motive in
8 pursuing the litigation . . . (3) whether the litigant is
9 represented by counsel; (4) whether the litigant has
10 caused needless expense to other parties . . . or has
11 posed an unnecessary burden on the courts and their
12 personnel; and (5) whether other sanctions would be
13 adequate to protect the courts and other parties. . . .
14 The final and ultimate factor is 'whether a litigant who
15 has a history of vexatious litigation is likely to
16 continue to abuse the judicial process. . . .'

17 Walker, 231 B.R. at 350-51 (quoted case omitted).

18 Lakusta had a full and fair opportunity to litigate all claims
19 arising out of the 2002 Transactions. Judgment was entered against
20 him more than one year ago. The Judgment is final because Lakusta
21 did not appeal it. Lakusta has had two additional chances to
22 obtain amendment of the Judgment, but has been unable to identify a
23 proper basis for doing so, causing needless expense to Evans.
24 Lakusta is able to impose expense on Evans, who is represented by
25 counsel, without imposing expense on himself, because Lakusta
26 represents himself. Absent an injunction, Lakusta is likely to
27 continue trying to relitigate his alleged entitlement to one or
28 more of the La Honda properties, as evidenced by his new Rule 60(b)
motion, the state-court complaint filed in April, and his appeal of
the order denying the motion to compel abandonment of the
litigation claims. There does not appear to be any other sanction

1 that would be adequate to protect Evans regarding the 2002
2 Transactions.

3 Accordingly, the court will enter a separate order providing
4 that, absent prior permission from this court, Lakusta is
5 permanently enjoined from filing any action in any court against
6 Mark Evans, Sharon La Fountain, Alvin C. Silbernagel, Old La Honda
7 Properties, or their agents or employees, regarding the 2002
8 Transactions, the Settlement Agreement, the Settlement Order, or
9 the Judgment.

10 ****END OF MEMORANDUM****
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